



UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF INSPECTOR GENERAL  
SOUTHEAST REGION  
401 W. PEACHTREE STREET NW  
ATLANTA, GA 30365-3520

DATE: June 8, 1992

REPLY TO  
ATTN OF: At-720-2

SUBJECT: October 11, 1989, Briefing of  
Kevin Brosch, OGC and  
Larry McElvain, FAS

TO: Richard F. Allen  
Deputy Assistant Inspector General  
for Investigations  
Washington, D.C.

As requested by Deputy Assistant Inspector General Richard F. Allen on May 22, 1992, this is a summary of the briefing provided to Kevin Brosch, Attorney, Office of General Counsel (OGC), and Larry McElvain, Foreign Agricultural Service (FAS), USDA, by Assistant United States Attorney (AUSA) Gale McKenzie on October 11, 1989. This summary is based on notes taken by Special Agent A. Kenneth Golec and Supervisory Special Agent William R. Stover during the October 11 briefing. This summary presents topics that are relevant to a State Department memorandum of conversation, dated October 13, 1989, which was released as part of the March 30, 1992, statement made by Congressman Henry Gonzalez published in the Congressional Record. The memorandum of conversation documented a meeting between Frank Lemay, Special Assistant to the Under Secretary for Economic Affairs, State Department; Tom Conway, Associate General Counsel, OGC, USDA; Peter Bonner, Attorney, OGC, USDA; and Brosch, Attorney, OGC, USDA; and McElvain, FAS, USDA.

This memorandum is organized by topics shown in the Congressional Record.

Payments

Our notes show that AUSA McKenzie advised Brosch and McElvain that the investigation found Iraqi telexes to exporters which requested the payment of consulting fees to Matrix Churchill, an Ohio based company. Matrix Churchill is owned by TMG Engineering, a holding company based in England with ownership traced back to Iraq. AUSA McKenzie said that a witness was willing to testify that consulting fees were paid to Matrix Churchill. AUSA McKenzie also advised that Matrix Churchill was under investigation for providing missile technology to Iraq.

The Congressional Record showed:

"Available information indicates that the GOI required exporters to pay a substantial 'consulting fee' to an Ohio based company named Churchill Matrix. The US Attorney has found that Churchill Matrix has its headquarters in Great Britain and is a wholly owned subsidiary of TMG, a GOI fully owned holding company. Some information has been developed that Churchill Matrix has been involved in supplying military hardware to Iraq."

After Sales Services

AUSA McKenzie advised Brosch and McElvain that generally any exporter who sold to Iraq had to pay after sales considerations to Iraq. AUSA McKenzie said that it appeared BNL-Atlanta officials had knowledge of kickbacks paid by exporters. AUSA McKenzie asked if an exporter paid a \$350,000 kickback to a BNL-Atlanta official for assistance in a CCC guaranteed sale, could CCC void the guarantee.

McElvain stated at the October 11, 1989, briefing that during the 1988 negotiations with Iraq, U.S. negotiators told the Iraqis in general terms that, "It was not in the spirit of the GSM program to require after sales considerations." According to McElvain, the Iraqis told the USDA negotiators that they would not request after sales considerations. Brosch said that Iraqi officials have claimed that in Iraq it was a common practice to have after sales service contracts.

In response to AUSA McKenzie's question, Brosch said that exporters are only permitted to represent the net value of the commodity for the CCC guarantee. Brosch said that if a \$350,000 kickback payment was included in the commodity value for the CCC guarantee, the guarantee could be voided. A guarantee could be found void if a bank knew that kickbacks were made to make the sale. The agreement could also be voided if the bank had knowledge of any consulting fees or allowances that were not netted out of the guarantee. As an example, if there was a \$5 million commodity transaction that included a \$100,000 allowance for truck parts, the \$100,000 had to be netted out and the CCC guarantee issued for \$4.9 million.

The Congressional Record showed:

"The GOI reportedly required exporters participating in CCC guaranteed exports to Iraq to provide 'After Sales Services.'... The GOI was told by USDA about 18 months ago that these practices were illegal but they continued. The problem with these services, as with the payments, is that exporters figure the cost of the services into the declared value of the commodity sale. The upshot is that CCC is again guaranteeing financing of both commodities and non-commodity goods.

"In both the required fee payments and the after sales services it is the exporter who is liable under US law for falsifying documents given to the USG. ... The GOI has admitted to using both practices and sees both as 'good business practice.'"

Richard F. Allen

### Diversion of CCC Guaranteed Funds/Commodities

AUSA McKenzie questioned Brosch about the issue of Iraq purchasing more commodities than it needed. She told Brosch the investigative team was looking into the possibility Iraq bartered commodity products.

Brosch stated that he was unaware of any CCC regulations against Iraq bartering the commodities after they were received in Iraq. If the commodities were bartered before reaching their specified destination, there would not be a bill of lading to support the claim and CCC would not have to honor the guarantee. Per 7 CFR 1493.8ii there is a CCC requirement to provide an ocean carrier or intermodal bill of lading.

McElvain clarified that CCC has taken the position that a bill of lading does not have to show a country of destination, if the country of destination is a landlocked country. The CCC would depend on the exporter's certificate of destination to show where the commodity was going. CCC did not ask for the land carrier bill of lading/transport for goods going from a port to a landlocked country.

The Congressional Record showed:

"Although additional research needs to be done, it appears more and more likely that CCC guaranteed funds and/or commodities may have been diverted from Iraq to third parties in exchange for military hardware. McElvain reported that although, in the cases where adequate documentation exists, CCC commodities can be traced as far as Jordan and Turkey, in many cases it is not clear that they ever reached Iraq.

### Nuclear Related Equipment

AUSA McKenzie said that Matrix Churchill was under investigation for providing missile technology to Iraq. AUSA McKenzie used specific terminology, "nuclear fuel compactor and nose cone burr," in describing the ongoing investigation regarding the government of Iraq's use of BNL-Atlanta financing to acquire military related equipment.

The Congressional Record showed:

"USDA's Brosch noted that the US Attorney said there was some indication that diverted funds (and possibly direct bank lent funds) were used to procure nuclear related equipment. Noted in particular were a 'nuclear fuel compounder' and a 'nose cone burr.' Here the evidence of CCC diversion is not fully developed by the case remains open. DOD is apparently investigating this aspect of the problem."

Additional Allegations

AUSA McKenzie advised that exporters bought commodities at low prices and sold the commodities at inflated prices to Iraq with BNL-Atlanta financing.

Brosch said that FAS did not care if the exporters got the best selling price for commodities sold to Iraq. FAS assumed the market would dictate a fair selling price. Brosch said that CCC did not do price reviews to see what prices exporters charged under the GSM programs.

McElvain said there was no question that CCC program monitoring would be beefed up. McElvain did not know to what extent price monitoring would be looked at.

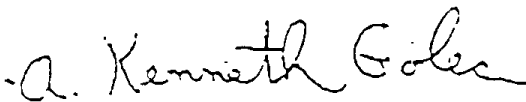
AUSA McKenzie cited examples of non-US origin seeds, tobacco, and sugar which exporters sold using BNL-Atlanta financing guaranteed under the GSM programs. AUSA McKenzie also stated that the investigation would include GSM guarantees where the sale price appeared below the U.S. market price for the commodity sold.

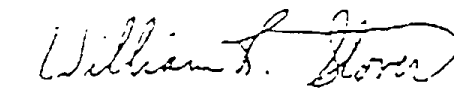
AUSA McKenzie advised that the investigative team suspected that non-agricultural products could have been shipped to Iraq under the guise of the CCC GSM guarantee programs. This allegation was going to be looked into during the investigation.

The Congressional Record showed:

"Brosch and Conway said that the US attorney is looking at additional allegations in the BDLA scandal. These include allegations of substantial over-pricing of commodities guaranteed under CCC; inclusion of non-U.S. origin commodities in guarantee program shipments; and, shipment of equipment under CCC commodity guarantee financing."

It should be noted that AUSA McKenzie and Special Agent Art Wade of USDA-OIG provided other briefings to the OGC prior to the October 13, 1989, OGC meeting with the State Department.

  
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